

ture, and, on the contrary, it is conceded that for that purpose they might be helpful indeed,¹⁷ is difficult to understand and seems to be incorrect. The basis for excluding such testimony is that it is usually unworthy of belief.

In concluding that justice is what the judges think, the unfavorable animadversion on English judges of the early nineteenth century (to the effect that the sense of justice in the mind of such a judge "would make him feel that the stopping of fox-earths was worse than the destruction of a farmer's crops, and that it was just that a small group of propertied men should be permitted to arrange their marital difficulties by divorce but that men without property should not"¹⁸) will not be persuasive with those who are familiar with the history of the spring-gun cases and who recall the opposition of Senators Norris and Black to the confirmation of Mr. Chief Justice Hughes and Mr. Justice Stone on the ground that their clients had been the rich and powerful. A man of high character, when he becomes judge, forgets his former employments and associations and recognizes but one client, the public.

Perhaps it is ungracious even to mention such small matters in view of the pleasure and profit which are to be derived from a careful reading of a little book so stimulating and informative.

MURRAY SEASONGOOD*

Democracy and Proportional Representation. By F. A. Hermens. Chicago: University of Chicago Press, 1940. Pp. v, 41. \$0.25.

This pamphlet by Professor Hermens of Notre Dame is a plausible attack upon proportional representation.¹ It is a dangerous attack from the standpoint of its proponents because it attributes to P. R. the responsibility for enabling Hitler and Mussolini to come to power. In the present state of public opinion, the mere suggestion that this is true is enough to alienate the affections of many from P. R. without bothering to consider the evidence.

A fundamental criticism of the importance and fairness of the contribution of this pamphlet to the serious consideration of P. R. in the United States may be made on the ground that it practically ignores the immediate, vital issue. The author admits: "In the United States P. R. is mainly advocated for local government."² Yet he devotes approximately thirty pages to a consideration of European experience with P. R. on a national scale and the dangers of P. R. in national elections in the United States; only eight pages are devoted to a totally inadequate consideration of P. R. experience and its application on the municipal level in the United States.

¹⁷ P. 62.

¹⁸ P. 158.

* Member of the Cincinnati Bar; part-time Professor, University of Cincinnati Law School.

¹ Proportional representation is a method of voting in which the preferential ballot is used, with the voter indicating his choices in order of preference, 1, 2, 3, etc., instead of marking crosses. It is designed for legislative bodies and results in each political group getting representation in proportion to its voting strength. In many European countries the "list system" is used, while in the United States the Hare system with the single transferable vote is the more popular variant. Proportional representation is generally referred to for convenience as P. R. and this policy will be followed in this review.

² P. 28.

When such American cities as Cincinnati, Toledo, Cleveland and New York City have had experience with P. R. for varying periods during the past fifteen years, it would seem that a fair and complete discussion of its workings in these communities would have more relevance and significance in determining whether it should be extended to other American cities than European experience. The conditions under which P. R. has operated in Europe in contrast with conditions in America are so fundamentally different even apart from the question of national versus local use, that it is impossible to predict results from European experience. P. R. was adopted in European countries which had a background of multiple-party systems as opposed to our predominant two-party system in city, state and nation. Some American municipalities have purely local parties or even hold non-partisan municipal elections.

In the section dealing with the application of P. R. to local elections, Professor Hermens concludes with what is apparently his most telling argument—that there are hundreds of cities in the United States which are well governed, and only five of them have P. R. “After all, the only requirement for good government is that a majority of the citizens want it.” This is a specious argument. Certainly it is possible to have good government without P. R., but the fundamental question is whether one is more likely to get it with P. R. Most students of government would concede that certain forms and techniques are better able to make effective the desire of a majority of the citizenry for good government than others. The city manager form, which Professor Hermens seems to approve, is but one illustration of such a technique. To measure the worth of P. R. we should consider not the number of cities with good government which get along without it, as compared with the number of cities with good government which have it, but whether the cities which have P. R. get better government with it than they had before. Before P. R. was adopted in New York City, Tammany elected sixty-two out of sixty-five councilmen. At the first election under P. R. Tammany elected only thirteen out of twenty-six, with approximately the same number of votes. Is New York getting better or worse government today? In Cincinnati the disreputable Hynicka machine elected thirty-one out of thirty-two members of the old council at the last election before P. R. was adopted. Under the first P. R. election the Charter party (city manager group) elected six out of nine members. Charles P. Taft has termed P. R. “the most important single element in the success of good government” in Cincinnati. But Professor Hermens prefers a long-distance view of European forests to such an analysis of American trees.

Since Professor Hermens has chosen to use what might be conservatively termed less relevant European evidence, his points should be considered, particularly because of their inherently prejudicial character. The author starts with the premise that the object of a representative body is not to represent, but to serve as an “intermediate organ of government.” “Only on the basis of an anarchist philosophy could it be claimed that the required unity of action could develop automatically from an attempt to ‘represent’ all that makes for diversity.” This premise itself seems to be an attack upon the democratic (technically republican) philosophy and form of government. If unity of action rather than representation of political opinion is the summum bonum, then Hitler’s system must be the logical end of the road Professor Hermens proposes to follow.

By demonstrating to his own satisfaction that P. R. is an “instrument of disintegration” because it produces multiple, minority parties, while the majority system of

voting produces a unity, or at least a majority in government (even though at the expense of denial of representation to certain groups of political opinion), Professor Hermens concludes that P. R. is bad, and the present system of voting good. The principal weakness in his case however lies in the fact that the multiple-party systems existed in Germany, Italy and other European countries prior to the adoption of P. R. They likewise existed in France in the absence of P. R. It is therefore impossible to charge P. R. with producing them. Professor Hermens fails to mention and explain the fact that Ireland, which has the best form of P. R., is one of the few countries today which has recently had a single party in control of the government. One might draw a fair conclusion, from a cursory glance at both sides of the evidence, that P. R. will neither create nor destroy multiple-party systems, but will merely reflect the pre-existing division between two or more parties.

The prejudiced approach which Professor Hermens seems to bring to his study is readily apparent from the method by which he purports to demonstrate that P. R. is the downfall of democracy. He lists the countries which had P. R. where democracy failed, those countries which do not have it where democracy still obtains, and the small number of countries of the P. R. group which still have a democracy. The implied argument is that P. R. has been responsible for the downfall of democracy in the first group. Included in this group are such countries as Austria, Poland, Latvia, Lithuania, Estonia and Czechoslovakia. Inasmuch as Professor Hermens' pamphlet only goes up to September 1939, there must now also be transferred from his last group to the first, Belgium, Luxembourg, Holland, Norway and Denmark. The general impression has been that Mr. Hitler, or in three cases Mr. Stalin, was the sole, direct and complete agent in overthrowing all of these democracies. Attributing their downfall to P. R. is at least a novel interpretation.

If it is correct, as the writer has been informed, that Professor Hermens is a German refugee, there may be an explanation for the biased approach which he brings to the subject. Hitler did come into power while a list system of P. R. was in effect in Germany, and one who has had personal cause to hate Hitler may well come to an ill-considered conclusion of cause and effect between the two facts.

Inasmuch as this pamphlet is quite obviously an attempt to make a case against P. R., it is surprising that the author failed to make use of the material on the constitutionality of P. R. Such material is pertinent to any discussion of the subject, and is an objection which can be raised with authority if not reason in some American states. Although the upper courts of New York and Ohio have held it constitutional, it has been held unconstitutional in Michigan and California under essentially the same constitutional provisions. Some of the reasoning used to arrive at the latter result is of a character not unlike some which is used by Professor Hermens.

ROBERT TODD MCKINLAY*

The Dual State: A Contribution to the Theory of Dictatorship. By Ernst Fraenkel. New York: Oxford University Press, 1940. Pp. xvi, 248. \$3.00.

Calm and objective treatises on National Socialism do not constitute a sizeable portion of our current literature. Perhaps the very nature of the movement as the

* Member of the Illinois Bar.